REMARKS

In the present Amendment, claims 1, 2, 4, 6, 8, 9 and 10 have been amended. Also, claim 3 has been canceled. Further, claims 11-14 have been added. This makes claims 1, 2, and 4-14 as pending the above-identified application.

No new matter has been added with the present amendments and new claims. The amendments are editorial in nature and/or have support throughout the present specification. New claims 11-14 reflect the subject matter of claims 7-10, but ultimately depend on claim 5.

Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Information Disclosure Statement and Copending Applications Issues

In response to the reminder that Applicant must submit references for consideration by the Examiner in the form of an Information Disclosure Statement, it is submitted that all of the relevant references presently known by Applicant have been submitted up to this point. Regarding the relevance of any copending letters, it is noted that the cited reference Canadian Patent No. 2,434,684 corresponds to published U. S. Application No. 2004/0077700 which in turn corresponds to U.S. copending Application No.: 10/466,168.

Specification Review

In response to the request that the Specification be reviewed, it is submitted that this has been done. It is believed that there are no significant errors. If the Examiner identifies any error, it is requested that these be identified.

Removal of Basis for Indefiniteness Rejection

Claims 1-10 have been rejected under 35 U.S.C. 112, 2nd paragraph, as allegedly being indefinite. Specifically, it is stated in the Office Action of July 13, 2006 that claims 1-10, while being enabling for the combination wherein component (1) is the compound having substituent "R_n" corresponding to hydrogen, the other combinations including different compounds used for component (1) are not enabled by the specification.

In response to the above-noted rejection, it is submitted that the claims of the present application have now been limited such that component (1) corresponds to the compound wherein "R_n" is hydrogen. Thus, the basis for the above rejection has been removed and it is requested that this rejection be withdrawn.

Issues under 35 U.S.C. 103(a)

Claims 1-10 have been rejected under 35 USC 103(a) as being unpatentable over Muller '684 (Canada Patent No. 2,434,684) and Wakai '028 (EP 1 077 028). Basically, it is the position of the Patent Examiner that Muller '684 discloses combinations including all of components (2)-(4), Wakai '028 discloses fungicidal mixtures including component (1), and it would have been obvious to one skilled in this technological area to combine the mixtures of Muller '684 with

Wakai '028 in order to obtain the mixtures claimed in the present application. This rejection is traversed based on the following reasons.

Present Invention and Its Advantages

The present invention is directed to synergistic fungicidal mixtures which include: a benzamideoxime compound of Formula (I) wherein "R_N" is hydrogen as component (1); a benzophenone Formula (II) as component (2); epoxiconazole as component (3); and, optionally, pyraclostrobin as component (4). As the comparative test results in Table 6 at pages 16-17 of the specification indicate, the combination of at least components (1)-(3) exhibits an advantageously and unexpectedly improved fungicidal efficacy over both the single components applied separately (Table 2) and the different sub-combinations of two components in Tables 3-5. Additional comparative test results supporting the patentability of the claims of the present application are presented in Tables 7-11.

Distinctions Over Cited References

Muller '684 discloses a synergistic mixture of three components including a benzophenone (I), a carbonate (II) and an azole (III).

Muller '684 fails to disclose or suggest the use of the benzamideoxime compound as employed in component (I) of the composition of the present invention. Muller '684 fails to provide any hint or suggestion that such a benzamideoxime compound be used in described composition. Thus, significant patentable distinctions exist between the present invention and Muller '684.

Wakai '028 discloses mixtures which include various benzamideoxime compounds which may be used in mixtures with a variety of other compounds as noted, for example, at paragraphs [0002] – [0003].

Wakai '028 fails to disclose or suggest the use of either of components (2) or (3) as employed in the composition of the present invention. Wakai '028 also fails to disclose or suggest the use of component (4) which is employed in some of the embodiments of the present invention. Thus, significant patentable distinctions exist between the present invention and Wakai '028.

It is further submitted that there fails to be a basis for a motivation to one skilled in the art to take a benzamideoxime compound from Wakai '028 and compound from Wakai '028 and combine this with at least a specific compound corresponding to component (2) and another specific compound corresponding to component (3) described in Muller '684. At best, the disclosures of Muller '684 and Wakai '028 provide a general suggestion for experimentation involving a vast multitude of combinations, without any specific suggestion that the combination of components (1) – (3) employed in the present invention will provide synergistic fungicidal results. Thus, there fails to be an adequate basis for combing Muller '684 with Wakai '028, other than improper "hindsight reconstruction" based on the disclosure of the present application. Consequently, it is requested that the above-noted rejection under 35 U.S.C. 103(a) be withdrawn.

It is submitted that the absence of any specific suggestion to combine components (1) – (3) together by either of above-discussed references supports a conclusion that *prima facie*

obviousness fails to be supported by these cited references. *In re Vaeck* 20 USPQ2d 1438 (Fed. Cir. 1991). Even assuming hypothetically that *prima facie* obviousness has been properly alleged, such obviousness has been rebutted by the evidence of advantageous, unexpected properties discussed above in connection with the comparative test evidence provided in the present specification.

Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Andrew D. Meikle Reg. No. 32,868 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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